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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

Misc. No. 613

KOGER A. WILSON, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR DISTRICT OF COLUMBIA IN OPPOSITION

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Argument:

I. *This court is without jurisdiction, under 28 U. S. C. § 1254, to review the action of the United States Court of Appeals for this Circuit in denying an appeal to it from the Municipal Court of Appeals* — 6

II. *Ordinarily this Court will not take jurisdiction to review cases involving the enforcement of laws of purely local application in the District of Columbia* — 7

III. *The United States Court of Appeals for the District of Columbia did not abuse its discretion when it denied the petition for allowance of an appeal* — 8

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Cases Cited

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STATUTES CITED

Revised Judicial Code, 1948 Edition
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56 Stat. 195, Chap. 207, §§ 7, 8
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Title 11, § 773 7
Act of Congress approved January 24, 1934
48 Stat. 323, Chap. 4 § 9
Title 25, § 109, D. C. Code, 1951 Edition 4, 7, 10

OTHER REFERENCES

Alcoholic Beverage Control Regulations,
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OPINIONS BELOW

The opinion of the Municipal Court of Appeals for the District of Columbia is reported at 108 A. 2d 376.

There was no opinion by the United States Court of Appeals for the District of Columbia Circuit and its order denying an appeal from the judgment of the Municipal Court of Appeals for the District of Columbia is not reported, but a copy thereof appears in the certified transcript of record.

The order of the United States Court of Appeals for the District of Columbia Circuit denying petitioner's motion for leave to file a motion for reconsideration and oral argument, time having expired, appears in the certified transcript of record.

JURISDICTION

The judgment of the Municipal Court for the District of Columbia (Criminal Division) was entered November 24, 1953 (R. 1499). The judgment of the Municipal Court of Appeals for the District of Columbia was entered October 26, 1954 (R. 1546). The order of the United States Court of Appeals for the District of Columbia Circuit denying an appeal from the Municipal Court of Appeals for the District of Columbia was entered February 21, 1955. The order of the United States Court of Appeals for the District of Columbia Circuit denying petitioner's motion for leave to file out of time a motion for reconsideration and oral argument was entered March 16, 1955.

The petition for a writ of certiorari was filed April 22, 1955, and, although it does not contain a statement of the grounds upon which the jurisdiction of this Court is based, petitioner, in his application for extension of time within which to file a petition for writ of certiorari, stated that the jurisdiction of this Court was invoked under Rule 37 (b) of the Federal Rules of Criminal Procedure and Title 28, Section 1254, United States Code.

QUESTIONS PRESENTED

1

May this Court review the discretion exercised by the United States Court of Appeals for the District of Columbia Circuit in denying an appeal to it from a judgment of the Municipal Court of Appeals for the District of Columbia?

Did the United States Court of Appeals for the District of Columbia Circuit abuse its discretion when it denied an appeal from the judgment of the Municipal Court of Appeals where the record disclosed that the matter involved was one of purely local law and that there was substantial evidence to support the judgment of conviction?

STATUTES INVOLVED

Revised Judicial Code, 1948 Edition
Title 28, U. S. C., Chap. 81, § 1254
Act of Congress approved April 1, 1942
56 Stat. 195, Chap. 207, §§ 7, 8
Title 11, §§ 772, 773, D. C. Code, 1951 Edition
Act of Congress approved January 24, 1934
48 Stat. 323, Chap. 4, § 9
Title 25, § 109, D. C. Code, 1951 Edition

REGULATIONS INVOLVED

Alcoholic Beverage Control Regulations, Section 15, page 45

RULES OF COURT INVOLVED

Rules of the United States Court of Appeals for the District of Columbia Circuit Governing Review of Cases from the Municipal Court of Appeals for the District of Columbia, Rules 1, 9 and 10
Rules of the Municipal Court for the District of Columbia, Criminal Division, Rule 7

The pertinent text of the Statutes and Rules of Court involved are set forth in the Appendix hereto.

STATEMENT OF THE CASE

Petitioner was charged and, on November 24, 1953, was found guilty by a jury in the Municipal Court for the Dis-

trict of Columbia of the possession for sale and the sale of alcoholic beverages without a license in violation of the Alcoholic Beverage Control Law of the District of Columbia [1] (R. 1499). A motion for a new trial or in the alternative for a judgment of acquittal was denied (R. 1533). Petitioner appealed to the Municipal Court of Appeals for the District of Columbia which, on October 26, 1954, affirmed the judgment of conviction (R. 1546). On February 21, 1955, the United States Court of Appeals for the District of Columbia Circuit denied a petition for allowance of an appeal, and thereafter denied petitioner's motion for leave to file a motion for reconsideration, the time for filing having expired. Then followed the petition to this Court for a writ of certiorari.

In the information upon which petitioner was convicted (R. 1499), it was charged that on July 12, 1953, he, with others, kept for sale and sold alcoholic beverages without a license in violation of the Alcoholic Beverage Control Law.

Motions by the petitioner for the return of property (R. 1512), for bill of particulars (R. 1515), for severance (R. 1520), to quash and dismiss information (R. 1521), to suppress evidence (R. 1526), to quash arrest, to quash arrest warrant, and to suppress evidence (R. 1527, 1529) were, after argument, denied (R. 4-382).

The information upon which petitioner was convicted (R. 1499), together with an information containing thirty-two counts which charged the petitioner and others with the commission of similar offenses during the period June 5, 1953, through July 6, 1953 (R. 1484), and an information charging another with the offense of transporting alcoholic beverages on July 12, 1953, in violation of the Alcoholic Beverage Control Regulations [2] (R. 1502) were, on motion of the government, consolidated for trial (R. 164).

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[1] Alcoholic Beverage Control Act, 48 Stat. 323, Ch. 4, § 9 (§ 25-109, D. C. Code, 1951 Edition).

[2] Alcoholic Beverage Control Regulations, § 15, p. 45.

The cases, as consolidated, were tried to a jury commencing on the 16th day of July, 1953, and there was evidence from which the jury could have found, and did find, that during the period June 5, 1953, through July 12, 1953, petitioner, with headquarters in a house in the 2000 block of Portner Place, N. W., engaged in and participated with others in the open and notorious possession and street sale of alcoholic beverages without a license. Petitioner frequently parked his automobile on Portner Place, N. W., and cases of bottles and cans were removed therefrom and carried into premises 2020 Portner Place, N. W. On occasions bottles were removed from petitioner's automobile and distributed to his co-defendants and to others who were thereafter observed to pass bottles to persons seated in automobiles and to receive from such persons money (R. 524, 674, 676-678, 694, 709, 715, 717, 781-783, 801-803, 918-919, 973-977, 1014, 1015).

On the basis of affidavits furnished by police officers who observed petitioner in his activity, an arrest warrant was issued and petitioner was placed under arrest shortly after he parked his automobile on Portner Place, N. W. (R. 1122). Upon search of petitioner's automobile several cases of bottles labeled "Whiskey" were found in the trunk (R. 1136-1141, 1155-1158). On the person of petitioner was found a five-dollar bill, the serial numbers of which corresponded with the serial numbers of a five-dollar bill which, together with another five-dollar bill (R. 1193), was a short time prior thereto given by a police officer to one of petitioner's co-defendants in payment for one fifth of whiskey (R. 1024-1025).

The petitioner had not been issued a license to sell alcoholic beverages (R. 1235).

SUMMARY OF THE ARGUMENT

The United States Court of Appeals for the District of Columbia Circuit having denied petitioner an appeal to it